IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.375 OF 2004

Shri Yashpal Dudeja .. Appellant
Versus
Smt.Shashi Yashpal Dudeja .. Respondent

Mr.S.A.Bhalwal h/f Vyas & Bhalwal for appellant
Ms Nayna Thatte h/f Mr.S.M.Oak for respondent

CORAM : P.V.KAKADE, J.

DATE : 22nd AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl.District Judge, Thane dismissing the appeal of the present appellant and confirming the judgment and order passed by Civil Judge, Junior Division, Thane in Marriage Petition No.110/1988. The cross objection filed by the respondent on record for enhancement of interim maintenance also came to be dismissed being not maintainable.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The appellant-husband has filed the Petition against the respondent-wife under Section 13(I)(ia)(ib) of Hindu Marriage Act, 1955 seeking divorce on the ground of desertion and cruelty. The petitioner-husband came with the case that the marriage between the parties was solominised on 9.3.1984 at Delhi as per Hindu Vedic Rites. Thereafter the respondent-wife went to co-habit with the petitioner at his residence in Bombay. At the time of marriage the petitioner as well as the respondent both were in employment. The respondent did not resign from her service, as agreed prior to the marriage. On that count differences started between them. According to the petitioner, the respondent wife subjected him to mental torture in various ways. On and of she used to go to her parental home at New Delhi and lodged a compliant against him to the police station. On the basis of which he was put to unnecessary harassment by the police. The petitioner tried his level best to persuade the respondent, but in vein. As a last resort, he decided to seek divorce from the respondent and filed the present petition.

. The respondent-wife contested the petition on various grounds, inter alia, submitting that the

allegations made by the appellant-husband were false and in fact he was addicted bad habits and in order to deceive from the habit she wanted to go to Bombay and in fact she had handed her resignation of service to the appellant-husband but the appellant persisted in not allowing her to stay with him and subjected to her to force harassment, as a result of which she was unable to bare of the attitude of the petitioner-and therefore returned her parental home at Delhi.

4. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence, led by both the parties, it was held that the appellant failed to prove either the element of desertion or that of mental torture and cruelty as well as harassment and as such the petition came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the Appeal. Hence the present appeal.

5. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. This is a marriage petition and this Court

thought it fit that the parties should amicably settle the dispute one way or the other. Proper and sufficient opportunities were given to the parties to mend their ways, however in vein. Hence the matter was heard on merit for admission.

6. The learned counsel for the appellant submitted that the evidence led by the petitioner to establish element of cruelty as well as desertion was in fact sufficient to pass decree of divorce, however, both the courts below have erred in rejecting the said evidence and have dismissed the petition. It was further submitted on behalf of the appellant that when wife had made certain allegations against the petitioner in her written statement without any basis and in fact was not in a position to prove the said allegations, it would amount to cruelty and decree for divorce could be passed on that count alone. In support of this submission, the learned counsel for the appellants sought to put reliance on the ruling of Division Bench of this Court in the case of **Mrs.Manisha Sandeep Gade vs. Sandeep Vinayak Gade** reported in **AIR 2005 BOMBAY 180**. I have perused the said ruling closely and must note that there cannot be two opinion regarding the ratio laid down in

the said case, however, the said ratio is not applicable to the present set of facts. So-called allegations made by the wife in her written statement in this case are definitely are not of such quality so as to brand them as cruelty at the hands of wife in absence of proof in support of such allegations. For instance, it is submitted by the respondent-wife in her written statement that the harassment of the petitioner was with the intention that she used to file police complaint at Delhi against him and ultimately the said case against the petitioner came to be dismissed. The learned counsel for the appellant submitted that factum of dismissal of the criminal case would show that the complaint was false. I prefer to disagree with this proposition. Merely because the complaint was dismissed that does not mean that the allegations were proved to be false, which would amount to cruelty to the petitioner at the hands of the respondent-wife. Be as it may, the fact remains that there is no substantial question of law involved in this appeal and the factual aspects of the entire evidence are seen to be properly appreciated by both the courts below, who have recorded the findings to the effect that the petitioner has failed to establish the element of cruelty as well as

desertion and as such I do not see any merit in the appeal and therefore, it stands dismissed with no order as to costs.